

<p style="text-align: right;">81</p> <p>1 supervision?</p> <p>2 A Yes.</p> <p>3 Q Which is a table, and you chart the</p> <p>4 vacation days and sick days?</p> <p>5 A It's an Excel spreadsheet --</p> <p>6 Q Okay.</p> <p>7 A -- in Excel. And so when I get up here</p> <p>8 where it says "Allocated" (pointing) --</p> <p>9 Q Okay.</p> <p>10 A -- all it does is -- this is Bernadine</p> <p>11 (pointing). So you can see that she has</p> <p>12 8.5 vacation days that are carryover, so</p> <p>13 she starts out with that. And as you put a</p> <p>14 minus 1 in, you know, each time it -- it</p> <p>15 either adds or subtracts so that the</p> <p>16 employees -- I could know, you know, how</p> <p>17 much time they had left. Because most</p> <p>18 people, you know, didn't keep track of --</p> <p>19 they didn't keep track of their own</p> <p>20 vacation, and they would come and say, "How</p> <p>21 many days do I have left?"</p> <p>22 Q Okay. Was this particular table kept on</p> <p>23 your computer system, or was it on your</p> <p>24 secretary's computer system?</p>	<p style="text-align: right;">83</p> <p>1 they called in.</p> <p>2 Q Their arrival times?</p> <p>3 A Their arrival times.</p> <p>4 Q Did you also keep track of their departure</p> <p>5 time?</p> <p>6 A No.</p> <p>7 Q Just the arrival?</p> <p>8 A Just the arrivals.</p> <p>9 Q How was it that you were able to be</p> <p>10 certain, if at all, that an individual had</p> <p>11 worked a full day?</p> <p>12 MS. MOORE: Objection.</p> <p>13 A Well, if I got into work at 8:30, I knew</p> <p>14 that, you know, there were people already</p> <p>15 in or watched when people came in, then I</p> <p>16 knew what time they were to go home.</p> <p>17 Q But you didn't check specifically to see if</p> <p>18 they had left?</p> <p>19 A No. Because -- because there were</p> <p>20 different people that came in later, and</p> <p>21 I'm not -- you know, I didn't stay until</p> <p>22 7:00 every night to monitor that. So, no,</p> <p>23 I kept no record of when people left.</p> <p>24 Q Did you require the employees under your</p>
<p style="text-align: right;">82</p> <p>1 A This is mine.</p> <p>2 Q On yours?</p> <p>3 A Yes.</p> <p>4 Q Okay. And did you distribute copies of</p> <p>5 attendance records to any other employee at</p> <p>6 CU?</p> <p>7 MS. MOORE: Objection.</p> <p>8 A Just their own. I was -- I tried to at</p> <p>9 least, you know, two or three times a year</p> <p>10 give this sheet to each individual --</p> <p>11 Q Okay.</p> <p>12 A -- so that they knew, you know, what they</p> <p>13 had.</p> <p>14 Q Was there any other system or procedure you</p> <p>15 kept for tracking of an employee's</p> <p>16 attendance --</p> <p>17 MS. MOORE: Objection.</p> <p>18 Q -- other than this table that we have</p> <p>19 before us?</p> <p>20 A I created a job performance record.</p> <p>21 Q Okay. And what's the job performance</p> <p>22 record that you -- please describe that.</p> <p>23 A That was a sheet I made to keep track of</p> <p>24 specific employees' arrival times and when</p>	<p style="text-align: right;">84</p> <p>1 supervision to check in with you when they</p> <p>2 arrived each morning?</p> <p>3 A No.</p> <p>4 MS. MOORE: Objection.</p> <p>5 Q So how is it that you were able to be</p> <p>6 certain whether an individual had duly</p> <p>7 arrived each morning?</p> <p>8 A Because I walked around the floor.</p> <p>9 Q You walked around the floor?</p> <p>10 A Yeah, the area where we all sat.</p> <p>11 Q How long did it take you to walk around the</p> <p>12 floor each morning?</p> <p>13 A Ten seconds --</p> <p>14 Q Okay.</p> <p>15 A -- barring "good morning" or a chat with</p> <p>16 someone.</p> <p>17 Q And what time did you walk around the floor</p> <p>18 each morning?</p> <p>19 MS. MOORE: Objection.</p> <p>20 A I don't recall. Several times.</p> <p>21 Q When's the first time in which you walked</p> <p>22 around the floor to check to see if your</p> <p>23 employees were present each morning?</p> <p>24 MS. MOORE: Objection.</p>

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1 A Around 9:30ish.
 2 Q Approximately 9:30 you would walk around
 3 the floor to make certain that the
 4 individuals in the group were present and
 5 working?
 6 A Correct.
 7 Q Okay. Did you also walk around subsequent
 8 to 9:30 if an individual or one of your
 9 members wasn't present at that time?
 10 A Yes.
 11 Q Okay.
 12 THE WITNESS: Kathleen -- I'm
 13 sorry -- can we take a break?
 14 MS. HILL: Sure.
 15 (Off the record)
 16 (A break was taken.)
 17 (Back on the record)
 18 MS. HILL: Could I have the
 19 next one marked as Exhibit 4.
 20 (Exhibit No. 4, the 4/12/00
 21 performance job record for
 22 Bernadine Griffith, was marked
 23 for identification.)
 24 Q Ms. Holmes, on your break, the next

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1 document was marked Exhibit No. 4. If you
 2 would take a look at that document, Exhibit
 3 No. 4, and identify that with the Bates
 4 numbers; and state what that document
 5 pertains to, if you would, please
 6 (handing).
 7 A It's job performance record, and it's
 8 DEF 0093 and DEF 0094.
 9 Q It's your performance job record?
 10 A Yes.
 11 Q Is this the typical performance job report
 12 that you kept and maintained on each of the
 13 employees under your supervision?
 14 A No.
 15 Q This format. I'm sorry?
 16 A No.
 17 Q Did you create performance job records for
 18 any other employees under your supervision?
 19 A Yes.
 20 Q Okay. And what's the difference between
 21 their job performance record, if any, and
 22 this particular record?
 23 A The only difference would be the facts
 24 inside the spreadsheet.

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1 Q Okay.
 2 A These pertain to Bernadine. The other ones
 3 would be the days, dates, and times of the
 4 other person.
 5 Q Right. That's what I mean. Is this your
 6 standard procedure for tracking of
 7 employees' job performance under your
 8 control?
 9 MS. MOORE: Objection.
 10 A Yes.
 11 Q And what was the purpose of generating a
 12 performance job report -- or performance
 13 job record? I'm sorry.
 14 A I had some concerns about the patterns with
 15 two employees. Bernadine was one of them.
 16 Q And who was the other employee?
 17 A Mary Ann Russo.
 18 Q Okay.
 19 A You know, having excessive absenteeism or
 20 tardiness.
 21 Q So you created a performance job record
 22 with regards to Mary Ann Russo and
 23 Bernadine Griffith?
 24 A Yes, I did.

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1 Q Any other individuals did you generate a
 2 performance job record?
 3 A No, I did not.
 4 Q Okay. All right. Directing your attention
 5 to the Bates No. 93, the first page of this
 6 record -- the first date on this record is
 7 April 12, 2000. Is that the first date and
 8 time that you entered in 2000 in
 9 Ms. Griffith's performance job record?
 10 A Yes.
 11 Q So prior to April 12, 2000, there was no
 12 performance job record on Ms. Griffith?
 13 A That's correct.
 14 Q Directing your attention to Exhibit
 15 No. 3 -- is that the only documentation of
 16 Ms. Griffith's attendance record that you
 17 personally created prior to April 12, 2000?
 18 MS. MOORE: Objection.
 19 A Are you asking me if --
 20 Q Take a look at that.
 21 A I need to be clear on what you're asking.
 22 Are you asking me if this document -- I'm
 23 talking about the 2000 attendance for
 24 Bernadine Griffith, DEF 91 and DEF 92,

<p style="text-align: right;">89</p> <p>1 Exhibit 3 -- I need -- please ask the</p> <p>2 question again.</p> <p>3 Q Sure. I was directing your attention first</p> <p>4 to Exhibit No. 4.</p> <p>5 A Correct.</p> <p>6 Q And I had noted that you started keeping a</p> <p>7 written record of Ms. Griffith's</p> <p>8 performance job record on April 12, 2000.</p> <p>9 A Correct.</p> <p>10 Q And you had established that you did not</p> <p>11 keep any other performance job record</p> <p>12 pertaining to Ms. Griffith prior to</p> <p>13 April 12, 2000.</p> <p>14 A Correct.</p> <p>15 Q So my question, then, is: With regards to</p> <p>16 her attendance record -- directing your</p> <p>17 attention to Exhibit No. 3 -- is this the</p> <p>18 only written form of documentation that you</p> <p>19 kept with regards to Ms. Griffith's</p> <p>20 attendance?</p> <p>21 MS. MOORE: Objection.</p> <p>22 A I believe so.</p> <p>23 Q Okay. So apart from Exhibit No. 3 and</p> <p>24 Exhibit No. 4, did you have a system in</p>	<p style="text-align: right;">91</p> <p>1 time be at 10 a.m.?</p> <p>2 MS. MOORE: Objection.</p> <p>3 A I don't remember.</p> <p>4 Q Okay.</p> <p>5 A I was given a note. Bernadine gave me a</p> <p>6 note.</p> <p>7 Q And when did Ms. Griffith give you the</p> <p>8 note?</p> <p>9 A I don't remember. I --</p> <p>10 Q Okay.</p> <p>11 MS. MOORE: Were you finished</p> <p>12 answering?</p> <p>13 THE WITNESS: Yes.</p> <p>14 A When she gave me the note, I accommodated</p> <p>15 the note.</p> <p>16 Q Okay. And when Ms. Griffith gave you the</p> <p>17 note sometime in 2000 for her start time to</p> <p>18 be at 10 a.m., did you discuss the arrival</p> <p>19 of Ms. Griffith being able to arrive at</p> <p>20 10 a.m., with any other employee --</p> <p>21 MS. MOORE: Objection.</p> <p>22 Q -- at CU?</p> <p>23 A I don't know.</p> <p>24 Q Did you discuss it with Michael Sisto?</p>
<p style="text-align: right;">90</p> <p>1 place to keep record of Ms. Griffith's</p> <p>2 attendance or job performance, other than</p> <p>3 these two documents that we have before us?</p> <p>4 A No. This is how I did it.</p> <p>5 Q Okay. All right. So directing your</p> <p>6 attention to Exhibit No. 4 --</p> <p>7 A Yes.</p> <p>8 Q Prior to April 12, 2000, was Ms. Griffith</p> <p>9 tardy on any date?</p> <p>10 A Yes.</p> <p>11 MS. MOORE: Objection.</p> <p>12 Q And when was Ms. Griffith tardy?</p> <p>13 A I couldn't tell you.</p> <p>14 Q How do you know she was tardy prior to</p> <p>15 April 12, 2000?</p> <p>16 A Because I started this after noticing a</p> <p>17 late time of arrival with her.</p> <p>18 Q And what was Ms. Griffith's arrival time in</p> <p>19 year 2000?</p> <p>20 A It was supposed to be 10 a.m.</p> <p>21 Q And why was Ms. Griffith's arrival time</p> <p>22 supposed to be at 10 a.m.?</p> <p>23 A Her doctor requested it.</p> <p>24 Q And when did her doctor request her arrival</p>	<p style="text-align: right;">92</p> <p>1 A Yes.</p> <p>2 Q And when did you discuss it with Michael</p> <p>3 Sisto?</p> <p>4 A I don't remember.</p> <p>5 Q Did you make the decision yourself solely</p> <p>6 to permit Ms. Griffith to come in at</p> <p>7 10 a.m.?</p> <p>8 MS. MOORE: Objection.</p> <p>9 A Yes.</p> <p>10 Q Okay. Is that something that CU afforded</p> <p>11 the supervisors -- I'm sorry. Strike that.</p> <p>12 Did the supervisor have</p> <p>13 discretion to grant late arrival time?</p> <p>14 MS. MOORE: Objection.</p> <p>15 A Yes.</p> <p>16 Q Ms. Scanlon, in her deposition, referred to</p> <p>17 it as flex time. Is that your</p> <p>18 understanding of what you were providing</p> <p>19 Ms. Griffith was flex time?</p> <p>20 MS. MOORE: Objection.</p> <p>21 A I guess you could call it that.</p> <p>22 Q Okay. When Ms. Griffith requested to come</p> <p>23 in at 10 a.m., did you speak with</p> <p>24 Ms. Griffith about how long her workday</p>

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1 should be?

2 A The standard workday is seven and a half

3 hours -- or was seven and a half hours at

4 that time, I believe.

5 Q Okay. And how late did you work to in

6 2000?

7 MS. MOORE: Objection.

8 A It was different every day.

9 Q What was your usual departure time in 2000?

10 A I departed probably anywhere from around

11 5:30 to 6:30 --

12 Q Okay.

13 A -- most often.

14 Q And most often was Ms. Griffith present

15 when you departed?

16 A Yes.

17 Q Did you ever speak with Ms. Griffith at any

18 time in 2000 about your concern of her

19 arriving late?

20 A Yes, I think I did.

21 Q And when did you speak with her in 2000?

22 A I don't remember.

23 Q Do you recall having a specific meeting

24 with her and any other individual about her

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1 late arrival time --

2 MS. MOORE: Objection.

3 Q -- in 2000?

4 A There were probably several meetings, so

5 I -- you have to be -- that's a broad

6 question. I'm not clear on that.

7 Q I realize that. I'll clarify it.

8 A Okay.

9 Q Prior to your generating this performance

10 job record -- you earlier testified you

11 noticed that she was being tardy, thus the

12 reason why you would create this

13 performance job record.

14 A Right.

15 Q When you decided to create this job record,

16 okay, on April 12, prior to that time,

17 whether it be April or March or February or

18 January of that year, did you discuss with

19 Michael Sisto or any other individual about

20 your concerns of Ms. Griffith arriving

21 late; and if so, when?

22 MS. MOORE: Objection.

23 A I would have spoken to Mike Sisto, but I

24 don't -- somewhere between January and

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1 April 12, I would have spoken to him about

2 it.

3 Q Okay. All right. And Mike Sisto's

4 position at CU is what?

5 MS. MOORE: Objection.

6 Q Is he a manager?

7 MS. MOORE: Objection.

8 A He no longer works there.

9 Q No. I'm sorry. In 2000, what was Michael

10 Sisto's position with CU?

11 MS. MOORE: Objection.

12 A Manager? I don't know his exact title.

13 Q Manager over your department -- your group?

14 A Yes. Manager of Monica's -- Mike was

15 Monica's -- in '99 --

16 Q Right.

17 A -- Mike was Monica's manager. Tom Danforth

18 and I reported to Monica. In 2000, Tom

19 Danforth and I reported directly to Mike

20 Sisto.

21 Q So Monica Scanlon's position was

22 eliminated, and your direct supervisor was

23 Michael Sisto?

24 MS. MOORE: Objection.

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1 Q Is that correct?

2 A Yes.

3 Q Okay. And when you spoke with Michael

4 Sisto about your concerns due to

5 Ms. Griffith's late arrival time, what

6 recommendations did Michael Sisto make in

7 dealing with this issue?

8 MS. MOORE: Objection.

9 A I think we discussed putting something like

10 this document together.

11 Q Okay.

12 A Because this wasn't something that I had

13 ever done in the past.

14 Q You've never kept a performance job record

15 pertaining to someone's tardiness or late

16 arrivals or absences, as this record

17 reflects?

18 MS. MOORE: Objection.

19 A Prior to this time, no; but then there were

20 two employees.

21 Q Subsequent?

22 A Yes. Both Bernadine and Mary Ann Russo.

23 Q Mary Ann Russo's performance job record --

24 did that pertain to a change in performance

<p style="text-align: right;">97</p> <p>1 that pertained to absence and tardiness as</p> <p>2 well as --</p> <p>3 A Yes, it did.</p> <p>4 Q -- Ms. Griffith?</p> <p>5 And what, if any, steps did</p> <p>6 you take with Mary Ann Russo in addressing</p> <p>7 her issue of tardiness and absenteeism?</p> <p>8 MS. MOORE: Objection.</p> <p>9 A I met with her, and she was also given a</p> <p>10 written warning to her personnel file about</p> <p>11 her tardiness.</p> <p>12 Q And did Mary Ann Russo -- I'm sorry. Would</p> <p>13 you please for me -- could you describe who</p> <p>14 Mary Ann Russo is by her age, sex, and</p> <p>15 race?</p> <p>16 MS. MOORE: Objection.</p> <p>17 Q Well, obviously, female.</p> <p>18 A She's a female. At the time I don't know</p> <p>19 what her exact age was. 30s maybe.</p> <p>20 Q Okay. And what is her race?</p> <p>21 MS. MOORE: Objection.</p> <p>22 A I guess Caucasian. I ...</p> <p>23 Q Okay. All right. And is Mary Ann Russo --</p> <p>24 was she still employed in your group in</p>	<p style="text-align: right;">99</p> <p>1 A She was still employed by whatever our</p> <p>2 company name was then.</p> <p>3 Q CU -- well, OneBeacon Insurance.</p> <p>4 Was Mary Ann Russo employed in</p> <p>5 2001 with CU?</p> <p>6 A I don't know.</p> <p>7 Q Okay. And was Mary Ann Russo still in your</p> <p>8 group in 2001?</p> <p>9 A No.</p> <p>10 MS. MOORE: Objection.</p> <p>11 Q When was she transferred out of your group?</p> <p>12 MS. MOORE: Objection.</p> <p>13 A She wasn't transferred.</p> <p>14 Q What are the circumstances that she would</p> <p>15 have no longer been under your supervision?</p> <p>16 A She went out on maternity leave in, I</p> <p>17 believe, late August; and she was -- I'm</p> <p>18 trying to think. Within a few short weeks,</p> <p>19 the team had -- had pretty much picked up</p> <p>20 her responsibilities.</p> <p>21 She was due back, I believe,</p> <p>22 early December. She did not return at that</p> <p>23 time. At that time human resources told me</p> <p>24 I had options to either fill her position</p>
<p style="text-align: right;">98</p> <p>1 2000 -- by the end of 2000?</p> <p>2 A No.</p> <p>3 MS. MOORE: Objection.</p> <p>4 Q Was she terminated in 2000?</p> <p>5 MS. MOORE: Objection.</p> <p>6 A No.</p> <p>7 Q Did she voluntarily leave CU on her own</p> <p>8 accord?</p> <p>9 A No.</p> <p>10 MS. MOORE: Objection.</p> <p>11 Q When did Mary Ann Russo leave CU?</p> <p>12 MS. MOORE: Objection.</p> <p>13 A I don't know.</p> <p>14 Q Okay. Was she transferred out of your</p> <p>15 group in 2000?</p> <p>16 A No.</p> <p>17 Q Well, I believe I've already asked, was she</p> <p>18 employed at the end of 2000? Was she</p> <p>19 employed at the end of 2000 with CU?</p> <p>20 MS. MOORE: Objection.</p> <p>21 A Yes. I'm sorry. I'm confused.</p> <p>22 Q That's what I thought.</p> <p>23 A She was employed.</p> <p>24 Q She was still employed by the end of 2000?</p>	<p style="text-align: right;">100</p> <p>1 with someone else, dissolve the position,</p> <p>2 or hold the position for her. I chose to</p> <p>3 dissolve her position.</p> <p>4 Q Okay.</p> <p>5 A So I don't understand -- I mean, she was</p> <p>6 still employed by the company; she just</p> <p>7 wasn't on my team.</p> <p>8 Q She wasn't on your team. Was she a member</p> <p>9 of any other team subsequent to December of</p> <p>10 2000?</p> <p>11 A No, not that I know of. I mean, she was</p> <p>12 on -- she was on maternity leave or</p> <p>13 disability leave, and so I don't know what</p> <p>14 the company procedures are when someone</p> <p>15 comes back. I mean, I know that they hold</p> <p>16 something because she was still getting her</p> <p>17 benefits. I have no idea.</p> <p>18 Q Did Mary Ann Russo return from her</p> <p>19 maternity leave and to CU at some point in</p> <p>20 time?</p> <p>21 MS. MOORE: Objection.</p> <p>22 A Not that I know of.</p> <p>23 Q Okay. You had mentioned that Mary Ann</p> <p>24 Russo received a warning. Explain to me</p>

<p>125</p> <p>1 MS. MOORE: Objection.</p> <p>2 A No.</p> <p>3 MS. MOORE: Counsel, I would</p> <p>4 just like to state for the record that</p> <p>5 we're now using legal terms of art; and,</p> <p>6 again, Ms. Holmes is not aware --</p> <p>7 MS. HILL: This is a lay</p> <p>8 person and her understanding of</p> <p>9 "accommodation." If she doesn't understand</p> <p>10 what "accommodation" is, then she can</p> <p>11 define that to the best of her ability.</p> <p>12 Q Do you understand what "accommodation" is?</p> <p>13 What is your understanding of</p> <p>14 "accommodation"?</p> <p>15 MS. MOORE: Objection.</p> <p>16 A I -- I don't know. Giving him, you know,</p> <p>17 flexible work hours or something. I don't</p> <p>18 know. I knew who Dan was, but I didn't --</p> <p>19 he didn't work on our team, and I didn't --</p> <p>20 I don't know about any disability. I</p> <p>21 didn't know he was considered disabled.</p> <p>22 But I never worked with him.</p> <p>23 Q Okay. Earlier we discussed about</p> <p>24 Ms. Griffith coming in at 10 a.m., that she</p>	<p>127</p> <p>1 A (Pause.)</p> <p>2 Q I think you said providing them something.</p> <p>3 Go ahead and define "accommodation," to</p> <p>4 your understanding.</p> <p>5 A Ensuring that they're able to do their work</p> <p>6 if there was some special consideration</p> <p>7 like -- I don't know -- maybe he needed a</p> <p>8 special keyboard or -- I don't know.</p> <p>9 That's what I think an "accommodation"</p> <p>10 meant.</p> <p>11 Q Right. That's fine.</p> <p>12 All right. Are you aware of a</p> <p>13 CU policy that affords an employee to</p> <p>14 exchange time working -- coming in late and</p> <p>15 working -- I'm sorry -- yes, coming in late</p> <p>16 and working late?</p> <p>17 MS. MOORE: Objection.</p> <p>18 Q Was there a plan --</p> <p>19 MS. MOORE: Objection.</p> <p>20 Q -- to allow an employee to -- well, I'm</p> <p>21 sorry. Strike that, actually.</p> <p>22 What were the normal working</p> <p>23 hours at CU?</p> <p>24 MS. MOORE: Objection.</p>
<p>126</p> <p>1 had asked for that request.</p> <p>2 A (Nodding.)</p> <p>3 Q By Ms. Griffith asking for the request to</p> <p>4 come in at 10 a.m., is that an</p> <p>5 accommodation that you provided</p> <p>6 Ms. Griffith?</p> <p>7 MS. MOORE: Objection.</p> <p>8 A Yes, I would consider that an</p> <p>9 accommodation.</p> <p>10 Q Okay.</p> <p>11 A Maybe better -- is that what you mean by</p> <p>12 "accommodation"?</p> <p>13 Q No, no, no. It's your testimony.</p> <p>14 A Okay. But I'm just saying --</p> <p>15 Q That's why I'm saying it's important for</p> <p>16 you to define.</p> <p>17 A I mean, that's what I'm thinking it means.</p> <p>18 But if you're asking me a question, and</p> <p>19 "accommodation" means something different,</p> <p>20 then I don't know what it means.</p> <p>21 Q Right. That's fine. As you defined it,</p> <p>22 your understanding of an "accommodation" is</p> <p>23 providing someone something to be able to</p> <p>24 do their job?</p>	<p>128</p> <p>1 A The normal hours were 8 -- were 8:30 to</p> <p>2 4:30 type thing -- I mean 8:30 to 5,</p> <p>3 whatever. That's what they considered</p> <p>4 normal.</p> <p>5 Q And that's the time that an employee was</p> <p>6 expected to be -- arrive at 8:30 and could</p> <p>7 leave at 4:30?</p> <p>8 MS. MOORE: Objection. I</p> <p>9 think she just said 8:30 to 5.</p> <p>10 A Not necessarily.</p> <p>11 Q Well, what is your understanding of what</p> <p>12 are the hours that an individual is to work</p> <p>13 in your particular group?</p> <p>14 MS. MOORE: Objection.</p> <p>15 A I allowed flex hours up to 9:30, so that</p> <p>16 that person would work until, you know,</p> <p>17 5:30 or 6, whatever. I'm not doing the</p> <p>18 math right now, but up to 9:30 people</p> <p>19 coming in. Because then that meant we also</p> <p>20 had coverage later on the other end,</p> <p>21 because we were supporting offices not only</p> <p>22 on the East Coast, but on the West Coast.</p> <p>23 So by the time we went home,</p> <p>24 it was still, you know, 2 and 3:00 in the</p>